**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**
**DIVISION ONE**

| | | |
|---|---|---|
| DOROTHY NARRANCE,<br><br>Appellant,<br><br>v.<br><br>BALL METAL BEVERAGE CONTAINER CORP.,<br><br>Respondent. | ) | No. 63399-6-I<br><br>UNPUBLISHED OPINION<br><br>FILED: April 5, 2010 |

Schindler, C.J.—Dorothy Narrance works as a truck driver for Gardner Trucking Inc. While inspecting a load at Ball Metal Beverage Container Corporation (Ball), Narrance fell while walking on an ungraded area of natural vegetation and injured her ankle. Narrance sued Ball for negligence. Because Narrance failed to present any admissible evidence that the natural vegetation was unreasonably dangerous or that Ball knew or should have known of an unsafe condition, we affirm summary judgment dismissal of her lawsuit.

FACTS

In 2007, Ball Metal Beverage Container Corporation (Ball) owned and operated a beverage can manufacturing plant in Kent, Washington. Dorothy Narrance is employed by Gardner Trucking, Inc. as a truck driver. Gardner is an independent

contractor. Ball contracted with Gardner Trucking, Inc. (Gardner) to pick up and deliver trailers from a loading area at the plant to a number of beverage producers in the Pacific Northwest.

The Ball plant contained the manufacturing facilities, several loading docks, and more than an acre of tarmac where the trucks could access the loading docks. A smaller area of grass, with brush and other natural vegetation was located along the curb on the eastern side of the asphalt tarmac. The semi-trailers were parked either at the loading docks or across from the loading docks along the east curb at the edge of the tarmac near the grassy area.

When a Gardner truck driver arrived at the Ball plant, the driver would receive an assignment to pick up a trailer. The driver would then connect the trailer to the truck, inspect the load at the back of the trailer, and place a security seal on the trailer doors before leaving the plant. If the trailer was located at a loading dock, the driver would pull the trailer forward before inspecting the load. If the trailer was parked along the east curb, instead of pulling the truck forward, the driver would usually walk on the ungraded grassy area to inspect the load.

Narrance arrived at the Ball plant at around 1:45 a.m. on September 5, 2007. Narrance backed her truck up to a trailer parked against the curb on the east side of the tarmac. As she had done many times before, Narrance walked on the grassy area at the back of the trailer to inspect the load. Narrance said that when her right foot went into a small hole that was obscured by vegetation, she fell and injured her ankle.

Narrance filed a complaint for damages against Ball alleging that Ball

negligently "created and failed to correct the hazards that existed in the grassy area."

Ball filed a motion for summary judgment. Ball argued that it was not negligent and did not breach its duty of care to Narrance because the dangers of walking on a natural ungraded area in the middle of the night were known and obvious. In support of the motion for summary judgment, Ball submitted photographs of the loading area and portions of Narrance's deposition.

In her deposition, Narrance admitted that the grassy area was not "manicured like the front lawn" and that she could have driven the truck and trailer forward to inspect the load. Narrance also testified that "she had walked on the grassy areas many times."

> Q. Okay. And had you done that before? Walked on the grass before?
> A. Yes.
> Q. How many times would you estimate you had done that before September 5 of 2007?
> A. Many.
> Q. Okay. And you knew it was a grassy, sort of natural area, right?
> A. Yes.
> Q. Okay. And were you in -- do you remember, in your experience, from time to time the grass would be cut?
> A. Yes.
> Q. And when did you walk back there, tell me about the surface you walked on. Was it even? Was it flat?
> MR. WILLIAMSON: Hang on. I'm going to object to the form. I don't know if you mean that day or in general because --
> Q. In general.
> A. The grass, it was normal -- just normal yard. I walked around back there many times before that.
> Q. Okay. Was there any slope to it, or was it pretty flat?
> A. By our trailers, it was flat.
> Q. Okay. Was it an even surface, you know --
> A. Just like a normal yard.
> Q. Okay. But maybe not like as smooth as a golf fairway, but maybe like – what would you compare it to?
> A. Just a normal -- normal area.
> Q. Okay.

A. It wasn't manicured like the front lawn.

In opposition to summary judgment, Narrance argued the risk of injury was foreseeable and Ball failed to exercise reasonable care to protect the truck drivers from injury. Narrance submitted her deposition testimony that the area was poorly lit and that she believed the hole was created when electrical conduit to a nearby light pole was installed. Narrance also submitted a declaration from Gardner's lead night driver Forest McMullen. McMullen testified that drivers routinely walked on the grassy area in order to verify and inspect a load.[1]

> The trailers would be parked either against the loading dock or, more often, backed up against the curb along the grassy area across from the dock, such that the ends of the trailers would jet out onto a grassy area behind the curb. Based on their assignment, each driver would then connect his or her tractor to their designated trailer.
>
> In order for a driver to verify his or her load in a trailer that was backed up to the loading dock, it would be necessary to move the entire tractor and trailer forward, then walk to the back of the trailer, open the doors of it, inspect the load, then close the doors and seal it. In order for a driver to perform the same task with respect to the trailers that were backed up against the curb next to the grassy area, it was not necessary, except in rare circumstances, for them to move their tractor and trailer rig forward so that they could then access the doors at the rear of the trailer.
>
> Occasionally, but rarely, trailers might be parked so close together that a driver could not comfortably walk between the two and get to the rear of the trailer to inspect the load. In those instances the driver might pull his or her tractor and trailer forward in order to access the rear doors. When I first began to work at Ball Metal Beverage, there was no requirement that drivers pull their trailers and tractors forward if they were parked next to the curb and grassy area before opening the rear doors to inspect their load. Drivers routinely walked out onto the grassy area in order to open the rear doors for inspection purposes.

The court granted Ball's motion for summary judgment. Narrance appeals.

[1] Narrance also submitted similar testimony from another driver.

ANALYSIS

Narrance argues that the court erred in granting summary judgment because Ball did not present evidence that the dangers of walking on the grassy area were obvious and there are material issues of fact as to whether Ball knew or should have known of the dangerous condition.

A defendant can move for summary judgment by showing that there is an absence of evidence to support the plaintiff's case. Young v. Key Pharm., Inc., 112 Wn.2d 216, 225-26 n.1, 770 P.2d 182 (1989) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986)). If the defendant shows an absence of evidence to establish the plaintiff's case, the burden then shifts to the plaintiff to set forth specific facts showing a genuine issue of material fact for trial. Young, 112 Wn.2d at 225.

While we construe all evidence and reasonable inferences in the light most favorable to the nonmoving party, if the plaintiff "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," summary judgment is proper. Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.3d 1068 (2002); Young, 112 Wn.2d at 225 (quoting Celotex, 477 U.S. at 322).

The nonmoving party may not rely on speculation or "mere allegations, denials, opinions, or conclusory statements" to establish a genuine issue of material fact. Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co., 122 Wn. App. 736, 744, 87 P.3d 774 (2004) (citing Grimwood v. Univ. of Puget Sound, Inc., 110 Wn.2d 355, 359, 753 P.2d

517 (1988)). Supporting affidavits must contain admissible evidence that is based on personal knowledge. Grimwood, 110 Wn.2d at 359. A party's self-serving opinion and conclusions are insufficient to defeat a motion for summary judgment. Grimwood, 110 Wn.2d at 359-61.

To establish negligence, Narrance must prove (1) the existence of a duty, (2) breach of that duty, (3) injury, and (4) proximate cause between the breach and the injury. Tincani v. Inland Empire Zoological Soc'y, 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). The determination of whether the defendant owes a duty to the plaintiff is a question of law. Tincani, 124 Wn.2d at 128.

Here, there is no dispute that Ball owed Narrance a duty of reasonable care as an invitee. But a landowner is only liable to an invitee for physical harm caused by a dangerous condition on the land if the landowner:

> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
> (c) fails to exercise reasonable care to protect them against the danger.

Iwai v. State, 129 Wn.2d 84, 93-94, 915 P.2d 1089 (1996) (quoting Restatement (Second) of Torts § 343 (1965)). Moreover, a landowner is not generally liable to invitees for harm caused by obvious dangers. Mucsi v. Graoch Assocs. Ltd. P'ship #12, 144 Wn.2d 847, 860, 31 P.3d 684 (2001).

We reject Narrance's argument that Ball did not meet its burden of proof on summary judgment. Ball met its initial burden by showing there was no evidence to

support Narrance's claim that it knew or should have known that the grassy area created a dangerous or unsafe condition. In response, Narrance did not set forth specific facts showing there were genuine issues of material fact that Ball knew or should have known the natural grassy area created an unreasonable risk of harm. Narrance testified that she had walked on the grassy area many times before and knew that the area was an ungraded grassy area.

Narrance's testimony that the hole was created when a conduit was installed to a light pole is without foundation and speculative.

> Q: So you think that they didn't fill -- backfill the trench or the – to where they installed the electrical conduit?
> A: They – they had some dirt in there, but not all of it, and that hole was not filled.
> Q: Okay. So you believe that the hole that's depicted on Exhibit-6 was – was created when this conduit was put in?
> A: Right.
> Q: Okay. And what's your – the basis for your understanding of that?
> A: Well, I laid there and thought about it and looked at it for 45 minutes.

Bare allegations unsupported by admissible evidence are insufficient to create a material fact. Las v. Yellow Front Stores, Inc., 66 Wn. App. 196, 198, 831 P.2d 744 (1992) (nonmoving party may not rely on "conclusory allegations, speculative statements, or argumentative assertions").

And while McMullen's testimony established that the truck drivers often walked on the grassy area to inspect the trailer load, Narrance submitted no admissible evidence showing Ball knew or should have known that the grassy area created an unsafe condition. As in Hoffstatter v. City of Seattle, 105 Wn. App. 600, 20 P.3d 1003

(2001), the evidence showed that encountering holes in an ungraded natural area with vegetation and grass would not be an uncommon condition and it is reasonable to expect the truck drivers to pay closer attention when walking on the grassy area instead of on the paved asphalt tarmac. We conclude Narrance failed to carry her burden below.

The cases Narrance relies on, Williamson v. Allied Group, Inc., 117 Wn. App. 451, 72 P.3d 230 (2003), and Kinney v. Space Needle Corp., 121 Wn. App. 242, 95 P.3d 918 (2004), are readily distinguished.

In Williamson, a tenant was injured while walking down a steep, slippery, rocky slope in order to get to her apartment. We reversed summary judgment on the grounds that the contractor owed a duty of care to the tenant with respect to the dangerous condition created by the contractor. Williamson, 117 Wn. App. at 460.

In Kinney, an employee of a fireworks display company slipped and fell from a ladder on a platform at the top of the Space Needle. Kinney, 121 Wn. App. at 250. This court reversed summary judgment dismissal of the lawsuit against the Space Needle Corporation (SNC). Kinney, 121 Wn. App. at 247-49. The court concluded there were material issues of fact as to the SNC's liability as a landowner. Kinney, 121 Wn. App. at 250. In reaching that conclusion, we relied on the testimony of several employees and an expert witness that a fall by invitees unfamiliar with working on the ladder was foreseeable because the ladder rungs were round, exposed to rain, and painted with glossy paint. Kinney, 121 Wn. App. at 250.

Here, unlike in Williamson and Kinney, Narrance did not present any

admissible evidence that Ball created the alleged dangerous condition or that Ball knew or should have known that the grassy area presented an unreasonable risk of harm to invitees.

We affirm summary judgment dismissal of Narrance's lawsuit against Ball.

Schindler, C.J.

WE CONCUR:

Cox, J.

Grosse, J.